CENTRAL ADMINISTRATIVE TRIBUNAL, PRINCIPAL BENCH

OA No.2985/97, with OA No.161/98 and OA No.178/98

New Delhi, this 17th day of August, 1998

Hon'ble Shri T.N. Bhat, Member(J)
Hon'ble Shri S.P. Biswas, Member(A)

OA No.2985/1997

Dr. Mala Singh
w/o Dr.R.N. Mandal
D-50, 4, Vasundhara Enclave
Delhi-110 096 .. Applicant

(By Shri K.N.R. Pillai, Advocate)

OA No.161/1998

Dr. (Mrs.) Abha Bhandari
w/o S.K. Bhandari
17-C, Delhi Admn. Flats
Near Mahabir Nagar Extn.
Vikaspuri, New Delhi .. Applicant

(By Shri L.B. Rai, Advocate)

OA No.178/1998

Dr. Archana Dhawan
d/o Lt. Col. A.K. Dhawan
B-180, Naraina Vihar
New Delhi-110 29 .. Applicant

(By Shri K.N.R. Pillai, Advocate)

versus

Govt. of NCT of Delhi, through

1. Secretary(Medical)
   5, Shamnath Marg
   Delhi-110 054

2. Director of Health Services (Delhi)
   E-Block, Saraswati Bhavan
   Connaught Place, New Delhi .. Respondents

(By Shri Rajinder Pandita, Advocate)

ORDER

Hon'ble Shri S.P. Biswas

On the request of learned counsel for the parties in the aforesaid three Original Applications, they are being taken up for hearing

together as they contain similar issues, involving identical questions of law and reliefs prayed for. Accordingly, they are being disposed of by a common order.

2. Brief background facts, necessary for the disposal of these applications, are as follows:

OA No.2985/97

The applicant herein was initially appointed as Medical Officer(MO for short) on contract basis on a consolidated salary of Rs.6000/- per month in response to an advertisement released by the respondents and after interview/verification of her records/qualification etc., she was appointed for a period of six months from 27.6.97 which expired on 26.12.97. The terms of appointment are at Annexure A-2. Applicant herein is aggrieved by the respondents' failure to grant continuity of service to her although the vacancy and the job against which she was appointed are still continuing. She has filed this OA on 29.12.97 after her terms of contract came to an end on 26.12.97. She claims that she could not approach the Tribunal earlier because of Tribunal having been closed for a short vacation in the last week of December, 1997. Consequently, she seeks relief in terms of issuance of direction to offer her the benefits as given in the case of **Dr.(Mrs.) Sangeeta Narang & Ors. V. Delhi Admn. & Ors. ATR 1988(1) CAT 556**, which was complied with by the respondents by issuing an

appropriate order on 2.11.88 as at Annexure A-5 and also to treat her service as having been continued till a decision on the application is taken.

OA No.161/98

3. The applicant herein is aggrieved by the inaction on the part of the respondents to grant her continuity of service although the vacancy against which she was appointed is continuing. She is also aggrieved by the respondents' failure to give her the same pay scale as Junior Medical Officer(JMO for short) thus violating the principles of equal pay for equal work and the denial of the respondents to give her service benefits like leave, provident fund, medical attendance etc., as admissible to JMO. She was initially appointed for a period of three months and thereafter for a period of one year and three months as per the terms and conditions as at Annexure A-II. Subsequently, she was also appointed on the same terms and conditions for a period of one year from 20.1.97 to 19.1.98. Apprehending that her services may be terminated unceremoniously, she has filed this OA on 12.1.98 and continuing since then on the strength of an interim orders given by this Tribunal on 22.1.98. She has also sought relief in terms of a direction to the respondents to give the benefit of Dr. Sangeeta Narang's (supra) case. She claims that her case is covered by the judgement of the Apex Court in A.K. Jain & Ors. V. UOI, JT 1982(4) SC

445 and by orders of this Tribunal in Dr. J.P. Palyia's case in OA No.2564/97 and other connected cases V. Govt. of NCT of Delhi & Ors. decided on 23.4.98.

OA No.178/98

4. The applicant's case herein is identical in all respects to the facts and circumstances of OA 161/98. She also continues to be working on the strength of the interim orders dated 1.9.98 by the Tribunal, though her contract employment came to an end on 22.1.98.

5. In respect of OA 2985/97, respondents have taken a very strong preliminary objection against the maintainability of this OA. It has been submitted that the application is not maintainable and is barred by Sections 19, 20 and 21 of Administrative Tribunals Act, 1985. In support of the aforementioned contention, Shri R. Pandita, learned counsel for respondents relied on the decision of the Hon'ble Supreme Court in JT 1996 (1) SC 494. This was cited to buttress his contention that court/Tribunal cannot ante-date the contract inasmuch as services of Dr. Mala Singh came to an end on 26.12.97 before she could approach this Tribunal. With the expiry of six months period on 26.12.97, the relationship of master and servant in respect of the applicant in OA 2985/97 had ceased, the counsel contended.

6. In respect of other two OAs (161 and 178/98), learned counsel for the respondents has taken preliminary objections in that having regard to the provisions of Section 19 of AT Act, 1985, these two OAs are not maintainable as there was no order against which the applicants could have come to the Tribunal. He relied on the decisions in the cases of **P.Parameshwar Rao V. Divnl. Engineer, Telecom/Elluru & Ors. (CAT Full Bench Decision Vol.II page 250) and S.S.Rathore V. UOI AIR 1990 SC 10** and submitted that no representations have been made by the applicants to the respondents before agitating their grievance in the Tribunal. Another objection is that under section 52 of the NCT Act, 1991, a suit has to be against UOI which is the necessary party and the applications suffer from non-joinder of necessary parties.

7. We find that all the issues raised in the three applications have been discussed earlier in details by this Tribunal threadbare in the case of Dr. Sangeeta Narang (supra) and in OAs 2564/97 alongwith eight connected OAs as also in OAs 2600/97 and 2552/97 decided on 23.4.98 and 21.5.98 respectively. The decisions in the case of Sangeeta Narang (supra) has been upheld by the Hon'ble Supreme Court.

8. From a perusal of the records and pleadings advanced, we find that the case of the applicant in OA 161/98 is fully covered by the decisions of the Tribunal in OA 2564/97 etc. (supra). So is the

position in respect of OA 178/98. The respondents did not seriously dispute the fact that the facts and circumstances of the present cases are similar with the facts in Dr. J.P. Palyia's case (supra). The only difference is in respect of OA No.2985/97 wherein the services of the applicant had been terminated before she could approach this Tribunal. However, in view of the ratios and principle enumerated by the Tribunal in Sangeeta Narang's case which was later on upheld by the apex court, the case of the applicant in this OA deserves to be considered. In Sangeeta Narang's case it was held that Government can make short term appointment but the critical question was whether once having made such an appointment, was it open to the concerned authority to dispense with the services of the temporary/ad hoc employee at any time suiting to its sweet will, even if the need for filling up the post on temporary/ad-hoc/contract basis still persists. In other words, will it be just and fair on the part of the Government to terminate the services of a contractual employee who may have been appointed for a specified period even though the post has not been filled up by a regular incumbent and there is still need for manning such post uptil the time it is occupied by a regular appointee. On a careful consideration of the matter, the Tribunal in that case ventured to reply in the negative. We respectfully hold the same views. Dr. Mala Singh's case is well covered by

the decisions of this Tribunal in Sangeeta Narang's case as the former is equally affected by responents' policy of hire and fire.

9. We also find similar views have been taken by the apex court recently in the case of **International Airports Authority Employees Union V. Airport Authority of India, JT 1997(4) SC 757 and also in UOI & Ors. V. Subir Mukherjee JT 1998(3) SC 340** decided by the apex court on 29.4.98. In the former case, the apex court felt that if the work is of perennial nature and the contract labourer had continued to work over the years, casual labour for the contractor shall become the employee directly under the principle employer. Even assuming for argument sake that the applicants were not working under the principle employer(R-2, i.e. Government) but were under the contractor, services were to be regularised provided the vital condition precedent i.e. "availability of job" is not disputed. The apex court took the similar view in the case of Subir Mukherjee (supra).

10. When we raised the aforesaid a specific issue for clarification by the learned counsel for respondents, applicants' counsel mentioned at the Bar that the respondents have conceded in the High Court in a Writ Petition that they (respondents) need 230 Doctors and it is a continuing process. This is not disputed.

11. In the background of the circumstances aforementioned, all the three OAs are allowed with the following directions:

(a) The respondents shall grant the applicants in OA No.161/98 and 178/98 the same pay scale and allowances and other service benefits like leave, annual increment and other benefits of service conditions as are admissible to MOs who are appointed on regular basis in the corresponding pay scale.

(b) There is an artificial break in the services of the applicant in OA 2985/97 because of her services having come to an end on 26.12.97. This break shall be ignored and the period is to be treated as leave without pay and she shall be deemed to have been continued in service from the date of her first appointment till regular appointments are made by the respondents in accordance with the rules/instructions. She will also be eligible for other benefits as in para 11(a) above.

(c) In the circumstances of the case, respondents shall consider giving age relaxation, if needed, to all the applicants in these three OAs in accordance with the rules, if they are candidates before the UPSC for regular appointment to the extent of number of years of service they have rendered on contract basis.

(d) The above directions shall be implemented within three months from the date of receipt of a certified copy of this order.

(e) There shall be no order as to costs.

(S.P. Biswas)
Member(A)

(T.N. Bhat)
Member(J)

/gtv/

Attested
KLShaw
Co/c-III
20/8/98